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*Attorneys for Defendants Healthy Colon, Inc. and  
Crush, LLC.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

	X
	:
DR. MEHMET OZ; ZO CO 1, LLC; OW LICENSING	:
COMPANY, LLC; AND HARPO, INC.,	:
	:
Plaintiffs,	:
	:
v.	:
	:
FWM LABORATORIES, INC., ET AL.,	:
	:
Defendants.	:
	:
	X

Case No.: 09 CV 7297 (Batts)

**ANSWER OF DEFENDANTS HEALTHY COLON, INC. AND CRUSH LLC.**

Defendants Healthy Colon, Inc., (“Healthy Colon”) and Crush, LLC., (“Crush”) by their undersigned attorneys, answer the Complaint solely as it applies to these defendants as follows:

**NATURE OF ACTION**

1. Paragraph 1 of the Complaint does not contain factual allegations to which a response is required. To the extent that a response is required, defendants deny the allegations of this paragraph.

2. Deny the allegations of Paragraph 2 except admit that in the past defendants have sold an acai berry product and a colon cleansing product.
3. Deny each and every allegation of Paragraph 3.
4. Deny each and every allegation of Paragraph 4.
5. Deny each and every allegation of Paragraph 5.
6. Deny each and every allegation of Paragraph 6.
7. Paragraph 7 sets forth plaintiffs legal theory of the case to which no response is required. To the extent that a response is required, defendants deny these allegations.

### **THE PARTIES**

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8.
9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9.
10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10.
11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11.
12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12.
13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13.
14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 25.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 29.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 31.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34.

35. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40.

41. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 41.

42. Deny each and every allegation of Paragraph 42, except admit that defendant Healthy Colon has sold a product called Body Flush, and deny that it is currently or has ever infringed any rights of the plaintiffs.

43. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 43.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 44.

45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 45.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 46.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 47.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 48.

49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 49.

50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 50.

51. Defendant Crush denies each and every allegation of paragraph 51 except admits that it is located at the address in Utah specified.

52. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 52.

53. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 53.

54. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 54.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 55.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 56.

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 57.

58. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 58.

59. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 59.

60. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 60.

61. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 61.

62. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 62.

63. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 63.

64. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 64.

65. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 65.

66. Deny each and every allegation of paragraph 66.

#### **JURISDICTION AND VENUE**

67. Neither admit nor deny the allegation of paragraph 67, since these relate to a legal conclusion to which no response is required. To the extent a response is required, defendants deny same.

68. Deny each and every allegation of paragraph 68.

#### **FACTUAL ALLEGATIONS**

69. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 69.

70. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 70.

71. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 71.

72. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 72.

73. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 73.

74. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 74.

75. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 75.

76. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 76.

77. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 77.

78. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 78.

79. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 79.



80. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 80.

81. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 81.

82. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 82 and deny each and every other allegation of paragraph 82.

83. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 83 and deny each and every other allegation of paragraph 83.

84. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 84.

85. Deny each and every allegation of paragraph 85.

86. Deny each and every allegation of paragraph 86.

87. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 87.

88. Deny each and every allegation of paragraph 88.

89. Deny each and every allegation of paragraph 89.

90. Deny each and every allegation of paragraph 90.

91. Deny each and every allegation of paragraph 91.

92. Deny each and every allegation of paragraph 92.

93. Deny each and every allegation of paragraph 93.

94. Deny each and every allegation of paragraph 94.

- 95. Deny each and every allegation of paragraph 95.
- 96. Deny each and every allegation of paragraph 96.
- 97. Deny each and every allegation of paragraph 97.
- 98. Deny each and every allegation of paragraph 98.
- 99. Deny each and every allegation of paragraph 99.
- 100. Deny each and every allegation of paragraph 100.
- 101. Deny each and every allegation of paragraph 101.
- 102. Deny each and every allegation of paragraph 102.
- 103. Deny each and every allegation of paragraph 103.
- 104. Deny each and every allegation of paragraph 104.
- 105. Deny each and every allegation of paragraph 105.
- 106. Deny each and every allegation of paragraph 106.
- 107. Deny each and every allegation of paragraph 107.
- 108. Deny each and every allegation of paragraph 108.
- 109. Deny each and every allegation of paragraph 109.
- 110. Deny each and every allegation of paragraph 110.
- 111. Deny each and every allegation of paragraph 111.
- 112. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 112.
- 113. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 113.
- 114. Deny each and every allegation of paragraph 114.
- 115. Deny each and every allegation of paragraph 115.

- 116. Deny each and every allegation of paragraph 116.
- 117. Deny each and every allegation of paragraph 117.
- 118. Deny each and every allegation of paragraph 112, although admit that defendants have used affiliated marketing programs.
- 119. Deny each and every allegation of paragraph 119.
- 120. Deny each and every allegation of paragraph 120.
- 121. Deny each and every allegation of paragraph 121.
- 122. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 122.
- 123. Deny each and every allegation of paragraph 123.
- 124. Deny each and every allegation of paragraph 124.
- 125. Deny each and every allegation of paragraph 125.
- 126. Deny each and every allegation of paragraph 126.
- 127. Deny each and every allegation of paragraph 127.
- 128. Deny each and every allegation of paragraph 128.
- 129. Deny each and every allegation of paragraph 129.

### **COUNT I**

- 130. Defendants repeat and reallege their responses to the preceding paragraphs as if fully set forth herein.
- 131. Deny each and every allegation of paragraph 131.
- 132. Deny each and every allegation of paragraph 132.
- 133. Deny each and every allegation of paragraph 133.
- 134. Deny each and every allegation of paragraph 134.

135. Deny each and every allegation of paragraph 135.

136. Deny each and every allegation of paragraph 136.

**COUNT II**

137. Defendants repeat and reallege their response to the preceding paragraphs as if fully set forth herein..

138. Deny each and every allegation of paragraph 138.

139. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 139.

140. Deny each and every allegation of paragraph 140.

141. Deny each and every allegation of paragraph 141.

142. Deny each and every allegation of paragraph 142.

143. Deny each and every allegation of paragraph 143.

144. Deny each and every allegation of paragraph 144.

**COUNT III**

145. Defendants repeat and reallege their response to the preceding paragraphs as if fully set forth herein.

146. Deny each and every allegation of paragraph 146.

147. Deny each and every allegation of paragraph 147.

148. Deny each and every allegation of paragraph 148.

149. Deny each and every allegation of paragraph 149.

150. Deny each and every allegation of paragraph 150.

**COUNT IV**

151. Defendants repeat and reallege their response to the preceding paragraphs as if fully set forth herein.

152. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 152.

153. Deny each and every allegation of paragraph 153.

154. Deny each and every allegation of paragraph 154.

155. Deny each and every allegation of paragraph 155.

156. Deny each and every allegation of paragraph 156.

157. Deny each and every allegation of paragraph 157.

**COUNT V**

158. Defendants repeat and reallege their response to the preceding paragraphs as if fully set forth herein..

159. Deny each and every allegation of paragraph 159.

160. Deny each and every allegation of paragraph 160.

161. Deny each and every allegation of paragraph 161.

162. Deny each and every allegation of paragraph 162.

**COUNT VI**

163. Defendants repeat and reallege their response to the preceding paragraphs as if fully set forth herein..

164. Deny each and every allegation of paragraph 164.

165. Deny each and every allegation of paragraph 165.

166. Deny each and every allegation of paragraph 166.

167. Deny each and every allegation of paragraph 167.

168. Deny each and every allegation of paragraph 168.

169. Deny each and every allegation of paragraph 169.

170. Deny each and every allegation of paragraph 170.

#### **COUNT VII**

171. Defendants repeat and reallege their response to the preceding paragraphs as if fully set forth herein..

172. Deny each and every allegation of paragraph 172.

173. Deny each and every allegation of paragraph 173.

174. Deny each and every allegation of paragraph 174.

175. Deny each and every allegation of paragraph 175.

176. Deny each and every allegation of paragraph 176.

177. Deny each and every allegation of paragraph 177.

178. Deny each and every allegation of paragraph 178.

#### **COUNT VIII**

179. Defendants repeat and reallege their response to the preceding paragraphs as if fully set forth herein.

180. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 180.

181. Deny each and every allegation of paragraph 181.

182. Deny each and every allegation of paragraph 182.

183. Deny each and every allegation of paragraph 183.

184. Deny each and every allegation of paragraph 184.

**COUNT IX**

185. Defendants repeat and reallege their response to the preceding paragraphs as if fully set forth herein.

186. Deny each and every allegation of paragraph 186.

187. Deny each and every allegation of paragraph 187.

188. Deny each and every allegation of paragraph 188.

189. Deny each and every allegation of paragraph 189.

**COUNT X**

190. Defendants repeat and reallege their response to the preceding paragraphs as if fully set forth herein.

191. Deny each and every allegation of paragraph 191.

192. Deny each and every allegation of paragraph 192.

193. Deny each and every allegation of paragraph 193.

**COUNT XI**

194. Defendants repeat and reallege their response to the preceding paragraphs as if fully set forth herein .

195. This paragraph merely attempts to quote a portion of the law to which no response is required. The Court is respectfully referred to the cited statute.

196. Deny each and every allegation of paragraph 196.

197. Deny each and every allegation of paragraph 197.

198. Deny each and every allegation of paragraph 198.

199. Deny each and every allegation of paragraph 199.

200. Deny each and every allegation of paragraph 200.

201. Deny each and every allegation of paragraph 201.

**COUNT XII**

202. Defendants repeat and reallege their response to the preceding paragraphs as if fully set forth herein.

203. Deny each and every allegation of paragraph 203.

204. Deny each and every allegation of paragraph 204.

**AFFIRMATIVE DEFENSES**

As further, separate and affirmative defenses, without assuming any burden of proof of that rests with Plaintiffs, the Defendants state as follows:

**FIRST AFFIRMATIVE DEFENSE**

The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred because Plaintiffs have suffered no damages as a result of any of the allegations against Defendants.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' claims are brought, in whole or in part, in an improper venue or jurisdiction.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to join a party required to be joined under Fed. R. Civ. P. 19.

**FIFTH AFFIRMATIVE DEFENSE**

The Complaint, in whole or in part, is barred, precluded, and/or limited by the statute of limitations.



**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, because any damages suffered resulted from the conduct of third parties other than the Answering Defendants.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to mitigate its damages.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, because the Answering Defendants owed no duty to Plaintiffs.

**NINTH AFFIRMATIVE DEFENSE**

Any damages suffered were not proximately caused by the acts or conduct of the Answering Defendants.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' own culpable conduct.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, because the Answering Defendants acted in good faith.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to allege facts sufficient to show an ascertainable loss or a causal connection between any ascertainable loss and any unlawful practice.

**THIRTEENTH AFFIRMATIVE DEFENSE**

There is no reasonable expectation of privacy sufficient to maintain a claim for invasion of privacy.

**FOURTEENTH AFFIRMATIVE DEFENSE**

At all times, the Answering Defendants exercised due care and were not negligent.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for injunctive relief is moot.

**SIXTEENTH AFFIRMATIVE DEFENSE**

The Complaint, in whole or in part, is barred, precluded, and/or limited by the doctrines of laches, waiver, and estoppel.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

The Complaint fails, in whole or in part, because there is no likelihood of consumer confusion.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

The Complaint fails, in whole or in part, because there is no actual consumer confusion.

**NINETEENTH AFFIRMATIVE DEFENSE**

The Complaint fails, in whole or in part, because Plaintiffs' alleged trademark lacks secondary meaning and is not famous or distinctive.

**TWENTIETH AFFIRMATIVE DEFENSE**

The Complaint fails, in whole or in part, because the actions complained of constituted a fair use.

**TWENTY FIRST AFFIRMATIVE DEFENSE**

The Complaint fails, in whole or in part, because Plaintiffs' alleged trademarks are not being used as trademarks.

Defendants hereby give notice that they intend to rely upon any other defense that are now or may become available or appear during, or as a result of the discovery proceedings in this action and hereby reserve their rights to amend their Answer to assert such defense.

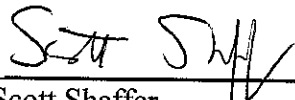
WHEREFORE, The Answering Defendants, respectfully request judgment against Plaintiffs as follows:

- (A) Dismissing with prejudice the Complaint in its entirety;
- (B) Awarding defendants costs, disbursements, and expenses incurred in this action, including reasonable attorneys' fees; and
- (C) Granting such other relief as the Court deems just and proper.

Dated: New York, New York  
September 14, 2009

Respectfully submitted,

THE LUSTIGMAN FIRM, P.C.

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\_\_\_\_\_  
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